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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,244	09/03/2004	Jurgen Benz	LUKP:117US	5243
24041	7590	04/07/2006		
SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			EXAMINER BEAULIEU, YONEL	
			ART UNIT	PAPER NUMBER
			3661	
DATE MAILED: 04/07/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,244	BENZ, JURGEN	
	<b>Examiner</b>	<b>Art Unit</b>	
	Yonel Beaulieu	3661	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/7/05</u> . | 6) <input type="checkbox"/> Other: _____  |

***Priority***

Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Germany on 3/7/2002. It is noted, however, that applicant has not filed a certified copy of the German application as required by 35 U.S.C. 119(b).

***Claim Rejections - 35 USC § 101 & 112***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1 – 7 are rejected under 35 U.S.C. 101 because the claimed invention is not supported by either a well asserted utility or a well established utility. Absent any steps to carry out the claimed method, utility cannot be established.

Claims 1- 7 are also rejected under 35 U.S.C. 112, first paragraph. Specifically, since the claimed invention is not supported by either a well asserted utility or a well established utility for the reasons set forth above, one skilled in the art clearly would not know how to use the claimed invention. There are no established steps as to how the method of is carried out to assist the skilled artisan in carrying out the claimed method.

Claim 7 is further rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, "especially" (line 1) renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Adamis et al. (US 5,915,512).

Regarding claims 1 – 3 and 7, Adamis teaches a method for carrying out upshifting from an initial gear into a target gear in a twin-clutch transmission (10) of a vehicle, wherein, when an incorrectly pre-selected target gear is detected, the engine torque ( $M_{Motor}$ ) of the vehicle is modified in such a manner that the output torque ( $M_{Output}$ ) is reduced if the correct target gear is engaged; wherein the engine torque ( $M_{Motor}$ ) is decreased at the beginning of a pulling upshift until the target gear is engaged and the engine torque ( $M_{Motor}$ ) is thereafter increased to a driver's desired torque ( $M_{FW}$ ); and the engine torque ( $M_{Motor}$ ) is maximally decreased to a reduced engine torque ( $M_{Red}$ ) (overall, note col. 4, lines 23 – 37, 52 – col. 5, line 10; col. 6, line 33 – col. 7, line 58 at least).

***Conclusion***

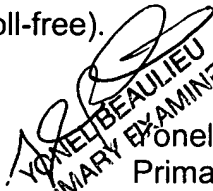
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Ikebuchi et al. (US 5,454,763) teaches related gear shifting in a twin-clutch transmission of a vehicle.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yonel Beaulieu whose telephone number is (571) 272-6955. The examiner can normally be reached on M-W 9-3; F 9-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas BLACK can be reached on (571) 272-6956. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3661

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
YONEL BEAULIEU  
PRIMARY EXAMINER  
Yonel Beaulieu  
Primary Examiner  
Art Unit 3661